IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

JOEL BRADBERRY,	§	
	§	
Plaintiff,	§	C.A. No. ______________
	§	
v.	§	
	§	JURY TRIAL DEMANDED
JEFFERSON COUNTY, TEXAS,	§	
	§	
Defendant.	§	

PLAINTIFF'S ORIGINAL COMPLAINT

COMES NOW Plaintiff Joel Bradberry (referred to as "Plaintiff") complaining of Defendant Jefferson County, Texas (referred to as "Defendant") for violating the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. §§ 4301-4335 ("USERRA") and TEX. GOV'T CODE §§ 613.001-613.023. In support thereof, he would respectfully show the Court as follows:

I. PARTIES

1. Plaintiff Joel Bradberry is an individual who is a citizen of the State of Texas.

2. Defendant Jefferson County, Texas is a political subdivision of the State of Texas and may be served with process pursuant to TEX. CIV. PRAC. & REM. CODE § 17.024(a) by serving Jefferson County Judge Jeff Branick at the Jefferson County Courthouse, 1149 Pearl Street, Beaumont, TX 77701.

II. JURISDICTION & VENUE

3. The Court has jurisdiction of this action pursuant to 28 U.S.C. § 1331 and 38 U.S.C. § 4323(b) because it arises under USERRA, a federal statute.

4. The Court has supplemental jurisdiction over Plaintiff's claims under TEX. GOV'T CODE §§ 613.001-613.023 pursuant to 28 U.S.C. § 1367(a) because they are so related to his claims under USERRA that they form part of the same case or controversy under Article III of the United States Constitution.

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) and 38 U.S.C. § 4323(c) because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in the Eastern District of Texas and because Jefferson County, Texas is a political subdivision of the State of Texas located in the Eastern District of Texas.

III. CONDITIONS PRECEDENT

6. All conditions precedent have been performed or have occurred.

IV. FACTS

7. Defendant Jefferson County, Texas is an employer within the meaning of 38 U.S.C. § 4303(4)(A).

8. Plaintiff was employed by Defendant from May 2007 to September 2008 as a deputy sheriff.

9. During his employment with Defendant, Plaintiff was a member of the United States Army Reserve ("USAR").

10. Plaintiff was ordered to report for USAR duty from September 1, 2008 through September 12, 2008; he was originally scheduled to return to work on September 13, 2008.

11. As a result of the imminent landfall of Hurricane Ike on September 13, 2008, Plaintiff's USAR orders were extended verbally by his commanding officer, Captain Dwayne Rose; Plaintiff and other members of his unit were ordered to evacuate to Abilene, Texas and remain there until released.

12. On September 12, 2008, Plaintiff contacted Defendant to advise that he would not be reporting to work on September 13, 2008 as previously scheduled because he and members of his unit had been ordered by his commanding officer to evacuate to Abilene, Texas and remain there until released.

13. Plaintiff was released from USAR duty at 7:00 a.m. on September 15, 2008.

14. Plaintiff left Abilene shortly after being released by his commanding officer on September 15, 2008.

15. Plaintiff was not scheduled to work for Defendant on September 15, 2008 or September 16, 2008.

16. Plaintiff spent the evening of September 15, 2008 in Kilgore and, after encountering numerous roadblocks that had been erected during the evacuation for Hurricane Ike, ultimately returned to his home in Jefferson County on September 16, 2008.

17. Plaintiff reported to Defendant after arriving home on September 16, 2008; he was subsequently scheduled to work a shift that began at 12:00 a.m. on September 17, 2008.

18. Shortly after returning to work, Defendant accused Plaintiff of being absent without leave and asked him to provide documentation related to his USAR duty and his absence from September 13, 2008 through September 16, 2008.

19. On two separate occasions, Plaintiff provided Defendant with memoranda from his commanding officer which memorialized the earlier verbal order extending Plaintiff's USAR duty until 7:00 a.m. on September 15, 2008 and requiring him to evacuate to Abilene, Texas.

20. In spite of the memoranda from Plaintiff's commanding officer, Defendant terminated Plaintiff.

21. Defendant terminated Plaintiff because of his documented absence from work to fulfill his USAR obligation.

22. After terminating Plaintiff, Defendant filed an F-5 Report of Separation of Licensee ("Separation Report") with the Texas Commission on Law Enforcement Officer Standards and Education ("TCLOSE") indicating that Plaintiff had been terminated for (i) insubordination; (ii) being absent without leave; and (iii) failing to truthfully answer questions or provide documentation and relevant statements to the sheriff or any supervisor in a departmental investigation when so ordered.

23. After being terminated, Plaintiff requested that the Combined Law Enforcement Associations of Texas ("CLEAT"), a labor union, represent him in connection with appealing his termination and correcting his separation report.

24. CLEAT was unsuccessful in its informal attempts to resolve Plaintiff's complaints. In fact, Jefferson County Sheriff George Woods told Plaintiff, in the presence of a CLEAT representative, that if Plaintiff was unable to report to work when needed, regardless of whether he had received orders from military authority, his services as a deputy sheriff were no longer required.

25. Plaintiff made a formal request for correction of his Separation Report to the Jefferson County Sheriff's Department and TCLOSE pursuant to TEX. OCC. CODE § 1701.4525(a); TCLOSE referred the matter to the State Office of Administrative Hearings ("SOAH") for a hearing before an administrative law judge ("ALJ") pursuant to TEX. OCC. CODE § 1701.4525 and 37 TEX. ADMIN. CODE § 217.8(d).

26. The ALJ specifically found that Plaintiff adequately notified Defendant regarding his military orders and properly determined that the Jefferson County Sheriff's Department failed to prove by a preponderance of the evidence that Plaintiff was terminated for any of the reasons originally listed on the Separation Report. Furthermore, the ALJ ordered Defendant and TCLOSE to amend the Separation Report to reflect that Plaintiff was honorably discharged and that he was terminated for a "disagreement over military leave." TEX. OCC. CODE § 1701.4525(e); 37 TEX. ADMIN. CODE § 217.8(e). No motion for rehearing was filed nor was any appeal was taken. TEX. GOV'T CODE §§ 2001.146, 2001.171-2001.178; TEX. OCC. CODE § 1701.506.

27. Separately, Plaintiff filed a USERRA complaint against Defendant with the United States Department of Labor ("DOL"). The DOL was unable to resolve Plaintiff's complaint and referred it to the United States Attorney General ("AG") pursuant to 38 U.S.C. § 4323. By letter dated August 17, 2009, the AG advised Plaintiff of his right to file a lawsuit against Defendant for violating USERRA in a court of competent jurisdiction.

V. COUNT ONE—VIOLATION OF USERRA

28. Plaintiff re-alleges and incorporates by reference all of the facts set forth in the above sections of this Complaint.

29. USERRA protects the job rights of individuals who voluntarily or involuntarily leave employment positions to undertake military service. USERRA also prohibits employers from discriminating against past and present members of the uniformed services and applicants to the uniformed services.

30. Defendant employed Plaintiff as a deputy sheriff from May 2007 to September 2008.

31. Plaintiff was an employee within the meaning of 38 U.S.C. § 4303(3).

32. Defendant was an employer within the meaning of 38 U.S.C. § 4303(4)(A).

33. By virtue of his service in the USAR, Plaintiff was entitled to the protection of USERRA.

34. Defendant received notice of Plaintiff's obligation or intention to perform service in the USAR within the meaning of 38 U.S.C. § 4303(8).

35. Defendant violated USERRA by terminating Plaintiff for his documented absence from work to fulfill his USAR obligation.

36. As a direct and proximate cause of Defendant's unlawful conduct, Plaintiff has incurred damages, including, but not limited to, the loss of past and future earnings and employment benefits.

37. Additionally, because Defendant willfully violated USERRA, the Court should award liquidated damages as provided for in 38 U.S.C. § 4323(d)(1)(C).

38. Finally, the Court should award Plaintiff his reasonable attorneys' fees, expert witness fees, and other litigation expenses as provided for in 38 U.S.C. § 4323(h).

VI. COUNT TWO—VIOLATION OF CHAPTER 613 OF THE TEXAS GOVERNMENT CODE

39. Plaintiff re-alleges and incorporates by reference all of the facts set forth in the above sections of this Complaint.

40. Defendant employed Plaintiff as a deputy sheriff from May 2007 to September 2008.

41. Plaintiff was a public employee within the meaning of TEX. GOV'T CODE § 613.001(3).

42. Defendant was a local governmental entity within the meaning of TEX. GOV'T CODE § 613.001(1).

43. By virtue of his service in the USAR, Plaintiff was entitled to the protection of Chapter 613 of the Texas Government Code.

44. Defendant violated Chapter 613 of the Texas Government Code by discharging Plaintiff without cause before the first anniversary of the date of his reemployment following his USAR duty.

VII. JURY DEMAND

45. Plaintiff requests a trial by jury.

VIII. PRAYER

46. For the foregoing reasons, Plaintiff asks for judgment against Defendant for the following:

a. past and future wages, salary, employment benefits and other compensation denied and/or lost by Plaintiff as a result of Defendant's violation of USERRA;

b. prejudgment interest at the prevailing rate;

c. postjudgment interest at the prevailing rate;

d. liquidated damages as provided for in 38 U.S.C. § 4323(d)(1)(C);

e. equitable relief, including reinstatement;

f. reasonable attorneys' fees, expert witness fees, and other litigation expenses as provided for in 38 U.S.C. § 4323(h); and

g. all other relief the Court deems appropriate.

Respectfully submitted,

MOORE & ASSOCIATES

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